

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott
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Chair
Commissioner
Commissioner
Commissioner
Commissioner

**In the Matter of the Feasibility of Approving
Without Hearing Certificates of Authority,
in Accordance With Minn. Stat. § 216A.03,
Subd. 7**

ISSUE DATE: August 25, 2000

DOCKET NO. P-999/CI-00-634

STANDING ORDER DESIGNATING
CERTAIN FILINGS AS FILINGS SUBJECT
TO APPROVAL UNDER MINN. STAT.
§ 216A.03, SUBD. 7

PROCEDURAL HISTORY

On May 26, 2000, the Commission issued a notice to parties soliciting comments on the feasibility of applying Minn. Stat. § 216A.03, subd. 7 to certificate of authority filings.

On June 17, 2000, the Commission received comments from the Department of Commerce (the Department) and the Minnesota Independent Coalition (MIC).

The Commission met on August 15, 2000 to consider this matter.

FINDINGS AND CONCLUSIONS

I. SUMMARY

In this Order, the Commission exercises its discretion under Minn. Stat § 216A.03, Subd. 7 to designate several additional categories of filings that will be deemed approved 60 days after filing unless the Commission, a Commissioner, or any other person requests the filing be set aside for action by the Commission.

The Commission's designation of such categories is effective for filings in these categories on and after September 1, 2000 but is not unqualified. The Commission's designation will take effect in the context of expedited procedures developed and implemented by the Commission's Executive Secretary. The expedited procedures to be developed and implemented by the Executive Secretary will include several provisions specified in the Order¹ and any others deemed appropriate by the Executive Secretary to protect the public interest and provide for the equitable and efficient administration of the filings in

¹ See Ordering Paragraphs 2, 3, and 4.

question.

II. BACKGROUND: MINN. STAT. § 216A.03 AND ITS USE TO DATE

In the 1999 Session, the Minnesota Legislature passed legislation empowering the Commission to approve certain filings without a hearing. The specific statutory language, Minn. Stat.

§ 216A.03, Subd. 7, is this:

Subd. 7. Filing approved without hearing. A filing with the commission may be deemed approved by the commission after 60 days of filing, unless the commission, a commissioner, or any other person requests the filing be set aside for action by the commission. The commission may designate, by standing order, categories or types of filings that are eligible for approval under this subdivision. Complaint filings, petitions for rule-makings, or petitions to increase rates are not eligible for designation. The commission must publish a weekly notice of the filings that are approved without other action by the commission, and shall issue a written order approving the filing upon passage of the 60-day term. Orders approved under this subdivision are subject to reconsideration, as provided in section 216B.27 or the commission's rules of practice and procedure, and nothing in this subdivision affects the rights of any entity under section 216B.17 or 237.081.

As authorized by this legislation, the Commission has considered and designated 911 cost certifications filings as eligible for approval without a hearing under § 216A.03, subd. 7 and delegated to its Executive Secretary the authority to implement this designation subject to certain conditions:

- 1) that Commission staff will continue to review 911 costs for appropriateness, accuracy, and tariff compliance;**
- 2) that interested persons will continue to have adequate opportunity to file comments on 911 cost certification filings and adequate opportunity to exercise their statutory right to request that any 911 cost certification filing be set aside for Commission action; and**
- 3) that the procedural history section of final orders certifying 911 costs will identify the types of costs being certified and the new features or system modifications to which those costs relate.²**

² In the Matter of the Commission Proposal to Issue a Standing Order for Approval of 911 Cost Certifications Pursuant to Minn. Stat. § 216A.03, Subd. 7, Docket No. P-999/CI-99-1723, STANDING ORDER DESIGNATING FILINGS REQUESTING CERTIFICATION OF 911 COSTS AS FILINGS SUBJECT TO APPROVAL UNDER MINN. STAT. § 216A.03, SUBD. 7 (March 21, 2000), pages 3-4.

III. PARTY RECOMMENDATIONS

A. THE MIC'S RECOMMENDATIONS

In its comments, the MIC supported applying the Minn. Stat. § 216A.03, Subd. 7 approval process to petitions for certificates of authority as an appropriate means of streamlining what is, in many instances, a lengthy process. The MIC noted that by allowing the Commission or another party to require that the regular Commission processes be applied, Minn. Stat.

§ 216A.03, Subd. 7 provides for Commission determinations (as required by Minn. Stat. §§ 237.16, Subd. 1(b) and 237.74, Subd. 12) in appropriate cases while preserving the benefits of the proposed process for the great majority of applications.

The MIC stressed that the applicant's provision of information required by the Commission's rules remained essential to provide the foundation for the Commission's determinations required by Minn. Stat. §§ 237.16, Subd. 1(b) and 237.74, Subd. 12 and to give the Commission and the parties a way to evaluate the applications and decide whether to use the customary Commission process.

Finally, the MIC stated that if the Commission determined that it could meet its responsibilities under Minn. Stat. §§ 237.16, Subd. 1(b) and 237.74, Subd. 12 using the procedure authorized by Minn. Stat. § 216A.03(7), there was no reason why the procedure should not be applied to both conditional and permanent (operational) certificates of authority.

B. THE DEPARTMENT'S RECOMMENDATIONS

In its comments, the Department recommended that the Commission issue a standing order designating certain certificate of authority filings as eligible for approval without hearing under Minn. Stat. § 216A.03, Subd. 7. In addition, the Department recommended designating other filings as subject to approval without a hearing pursuant to the statute: 1) initial tariffs or price lists; 2) 911 plans proposed by resellers of local exchange service; and 3) interconnections agreements. The Department further recommended that the Commission delegate to the Executive Secretary the authority to implement these designations.

IV. COMMISSION ANALYSIS

A. Introduction

Minn. Stat. § 216A.03, Subd. 7 allows the Commission to designate, through a standing order, certain categories of filings as being eligible for approval without hearing. The statute empowers the Commission to reduce regulatory lag time in issuing orders and enables the Commission to focus on relatively more disputed items during its hearing process.

While enabling the Commission to streamline the regulatory process, Minn. Stat. § 216A.03, Subd. 7 also provides safeguards to assure that consumer protections are not compromised for the sake of reducing the regulatory burden placed upon service

**providers. For example,
Minn. Stat. § 216A.03, Subd. 7**

- 1. excludes certain categories of filings, from the streamlined regulatory process, that are most prone to disputes (e.g., complaints);**
 - 2. allows parties to request reconsideration of Orders issued without hearing;**
 - 3. allows parties to request that the Commission open an investigation, under Minn. Stat. § 216B.17 or §237.081 and to conduct a further examination of a filing that was subject to approval by the Commission without a previous hearing;**
 - 4. allows a filing to be set aside for action by the Commission upon a request of the Commission, a Commissioner, or any other party.**
- B. Expedited Certification Procedures, Pursuant to § 216A.03, Subd. 7, for Petitions Seeking Conditional and Operational Certificates of Authority for Local Resale, Local Niche and Long Distance Services and Conditional Certificates of Authority for Facilities-Based Local Services**

The Commission agrees with the parties that it should streamline the approval process for certificates of authority and provide for their issuance without a hearing under § 216A.03, Subd. 7. After several years of analyzing and deciding such petitions, the existing process for reviewing petitions for certification tends to raise few issues that must be resolved through the hearing process. The Department recommends approval of the majority of petitions for certificates of authority and the Commission tends to approve these petitions on its consent agenda. While some applications for certification fail to fulfill all of the filing requirements of Minn. Rules Ch. 7811 and 7812 and the proposed tariffs included with the filings often need revisions in order to bring the tariffs into compliance with the Commission's rules, the Department generally has no difficulty in obtaining the necessary follow-up information on a timely basis in order to declare that the application is complete and to recommend that the Commission grant the requested certificate of authority. In processing applications for certificates of authority, it is rare for unresolvable disputes to arise between the applicant and the Department, for which the Department must seek a resolution from the Commission through a hearing.

In these circumstances, the current process of certificate review contains potentials for delaying competitive market entry. Given the safeguards provided in the statute itself and the procedures developed and implemented by the Executive Secretary pursuant to this Order, it is reasonable to eliminate these potentials for delay. In this Order, the Commission will authorize its Executive Secretary to develop and implement expedited procedures, consistent with Minn. Stat. 216A.03(7) and subject to certain conditions specified in Ordering Paragraph 1, for processing and approving these filings without Commission hearing.

The Commission agrees with the Department that establishing procedures for expedited approval of certificates of authority in accordance with Minn. Stat. § 216A.03, Subd. 7 satisfies the public interest statutory requirements set forth in Minn. Stat. §§ 237.16, Subd. 1

(b) and 237.74, Subd. 12 and will not compromise satisfaction of legislative intent. The Department will continue to analyze each petition for certification for statutory and regulatory requirements and will file comments on each petition.

The Commission notes that although the statute authorizes Commission approval without a hearing once the 60 day period has expired, the statute does not eliminate the Commission's responsibility to memorialize this action. Indeed, the statute specifically directs the Commission to do so in its weekly notice of filings that have been approved and by issuing a written Order. To provide an appropriate record for the Order approving the petition under this process, the Department will provide to the Commission a memorandum describing the specific company's request and the Department's recommendations for Commission action or any conditions or restrictions it recommends be placed on the applicant. If the Department does not provide such memorandum within the time limits contemplated by the Commission's Rules, the Department may request an extension of time as set forth in the Rules.

The Commission clarifies that it is not authorizing these procedures for petitions seeking operational certificates of authority to provide **facilities-based** local exchange service. No changes in the procedure for granting such petitions are warranted because they raise special issues, such as the provision of 911 service, for which a hearing continues to be warranted.

C. Expedited Certification Procedures, Pursuant to § 216A.03, Subd. 7, for Petitions Seeking Approval of Initial Tariffs and Price Lists

Applicants requesting certificates of authority usually submit a proposed tariff or price list for Commission approval along with their applications because the Commission's rules closely link the certification process with the review of the initial tariff or price list. Indeed, several items in the list of filing requirements for certification cover information that is integral to the review of the proposed tariff or price list. For example, Minn. Rules, Part 7812.0300, subp. 2 (D, G, and H) require certificate applicants to file information relating to the nature of their business, the types of services to be offered, and a proposed tariff or price list which, in turn, is the primary source of information that fulfills these portions of the filing requirements for a certificate. Information derived from the proposed tariff or price list is also included among the filing requirements for companies seeking certification to provide resold local exchange, local niche, and long distance services.

In the course of the Department's review of an application for a certificate of authority, then, given the close relationship that exists in the Commission's rules between the certification process and the analysis of the applicant's initial tariff or price list, the Department review of the one (petition for certification) necessarily involves the other (initial tariff or price lists).

In these circumstances, a concern for efficiency suggests that allowing the approval of certificates of authority without hearing in accordance with Minn. Stat. § 216A.03, Subd. 7 should be extended to allow for the approval of initial tariffs and price lists under the same procedural process. And, given the same safeguards applied to the approval of certificates of authority, the Commission finds that petitions seeking approval of initial tariffs and price lists are also appropriate subjects for expedited approval pursuant to Minn. Stat. § 216A.03, Subd. 7. The Commission will so designate in this Order and authorize the Executive Secretary to establish and implement appropriate procedures.

D. Expedited Procedures, Pursuant to § 216A.03, Subd. 7, for Petitions Seeking Approval of 911 Plans Proposed by Resellers of Local Exchange Service

Competitive local exchange carriers must file and receive Commission approval of a 911 plan before providing local exchange services in Minnesota, whether they are resellers of local service or facilities based local exchange carriers.

The Department recommended that petitions of resellers of local exchange service seeking approval of their 911 plans should be approved without a hearing but that the petitions of facilities based carriers for approval of their 911 plans continue to be reviewed under current procedures. The Department explained that resellers were quite different from facilities based providers with respect to the provision of 911 service because a 911 call placed by a customer of a local reseller will not be processed by the reseller, but by the incumbent local exchange carrier (that already has an approved 911 plan) even if the reseller does not have an approved 911 plan.

In short, the Commission's primary concern here (that a customer's 911 call will be completed) is already assured with respect to resellers of local exchange service. In this circumstance, the Commission finds no adverse impact that would result from approving, without hearing, the local resellers's 911 plans pursuant to procedures authorized by Minn. Stat. § 216A.03,

Subd. 7. Approval without hearing will reduce the possibility of regulatory lag time when such filings must be scheduled for hearing before the Commission without jeopardizing the quality of the 911 system.³

E. Expedited Procedures, Pursuant to § 216A.03, Subd. 7, for Petitions Seeking Approval of Interconnection Agreements

Before obtaining an operational certificate of authority, a competitive local exchange carrier must enter into interconnection agreements pursuant to 47 USC §252(e) and must file and receive Commission approval of these interconnection agreements. Minn. Rules, Parts 7812.1600 through 7812.2100 describe the general procedures relating to intercarrier negotiations including the procedures for mediation and arbitration of intercarrier negotiations, agreement approval, resolution of disputes arising under an existing agreement, rural carrier exemption from negotiations, and suspension of modification of agreements.

The Department has requested that the Commission provide for approval of such interconnection agreements without a hearing. The Department explained that under existing procedures, once an interconnection agreement is filed, parties (including the Department) have only 10 days to file written comments. Minn. Rule pt. 7812.1800, subp 4. The volume of interconnection agreements and amendments to existing interconnection agreements has increased as more competitive local exchange carriers receive authority or make changes to existing interconnection agreement and while interconnection agreements

³ The Commission clarifies that it will make no procedural changes to the process for approving 911 plans filed by facilities based local service providers. Since facilities based local service providers must carry the 911 calls of their customers, it is critical that they possess an effective 911 plan.

tend to have similar content, the format and issues vary with each filing to reflect the companies involved and the process by which the agreement was achieved.

These factors combine to impose a significant administrative burden upon the Department. Consequently, the Department frequently has difficulty in meeting the 10-day requirement in which to file written comments on each interconnection filing and often asks for 30-day variances to Minn. Rule pt. 7812.1800, subp. 4. Granting the variance reduces the Commission's time to issue a written Order, which must occur within 90 days of the filing as required in Minn. Rules, Part 7812.1800, subp. 6. The Department expects to file requests for an increasing number of variances as the volume of interconnection filings increases.

At the same time, after several years of processing interconnection agreements, the Commission has addressed almost all interconnection agreement issues, the vast majority of interconnection agreements meet legal and regulatory requirements, and it is rare that there is an unresolvable dispute between the applicant and the Department which must be resolved through a hearing.

In these circumstances, there is no warrant to run the risk that approval of totally appropriate interconnection agreements (and their amendments) will be delayed just to achieve a hearing before the Commission. Accordingly, the Commission will extend the expedited approval process to interconnection agreements and their amendments as well, subject to certain clarifications, qualifications, and safeguards:

First, the expedited process will not apply to interconnection agreements arbitrated under § 252 of the federal Telecommunications Act of 1996.

Second, the expedited process will apply to amendments to interconnection agreements as well as to interconnection agreements themselves, provided the interconnection agreements and their amendments are substantially similar to those previously approved by the Commission.

Third, during the 60 day period, the Department will continue to conduct the same level of analysis of interconnection filings that it currently provides. For filings approved under this expedited process, the Department will provide to the Commission a memorandum describing the specific company's request and its recommendations for Commission action or any conditions, restrictions, or changes it recommends be placed on the applicant. If the Department does not provide such memorandum within the time limits contemplated by the Commission's Rules, the Department may request an extension of time as set forth in the Rules.

V. CONCLUSION

The designations made and expedited approval procedures authorized in this Order aim to facilitate the competitive entry into the telecommunications marketplace by streamlining the regulatory review process. The Commission will retain its flexibility to act on filings on its own motion or when comments are filed, and the approval process will be expedited when no issues arise with respect to a given filing.

The Commission clarifies that the substantive standards for approval of these filings remain

unchanged as does the applicant's obligation to provide information required by the Commission's rules. The applicant filings provide the foundation for Commission approval and give the Commission and the parties a way to evaluate the applications and to decide whether to object and return to the customary Commission process.

ORDER

1. The Commission hereby designates four categories of filings as filings subject to approval without hearing under Minn. Stat. § 216A.03, Subd. 7:

Category A: **petitions for conditional and operational certificates of authority for local resale, local niche and long distance services and conditional certificates of authority for facilities-based local services;**

Category B: **petitions for approval of initial tariffs and price lists;**

Category C: **petitions by resellers of local service for approval of 911 plans;**

Category D: **petitions for approval of interconnection agreements and amendments to interconnection agreements (but not for approval of interconnection agreements arbitrated under § 252 of the federal Telecommunications Act of 1996) that are substantially similar to those previously approved by the Commission.**

2. **As to Category A, the Commission hereby delegates authority to its Executive Secretary to develop and implement, in accordance with Minn. Stat. § 216A.03, Subd. 7 and subject to the conditions set forth below, expedited certification procedures for conditional and operational certificates of authority for local resale, local niche and long distance services and conditional certificates of authority for facilities-based local services; the expedited procedures established by the Executive Secretary, and suggested in pertinent part by the Department in its comments, shall include the following conditions:**

(1) certificate of authority filings subject to this expedited process shall be done in accordance with applicable Commission Rules;

(2) the Department shall continue to review and analyze filings under its current process;

(3) with respect to filings to be approved under this expedited process, the Department shall provide to the Commission a memorandum describing the specific company's request and its recommendations for Commission action or any conditions or restrictions it recommends be placed on the applicant. If the Department does not provide such memorandum within the time limits contemplated by the Commission's Rules, the Department may request an extension of time as set forth in the Rules; and

(4) any other conditions or procedures recommended by the Commission's Executive Secretary.

- 3. As to Category B, the Commission delegates authority to its Executive Secretary to develop and implement, in accordance with Minn. Stat. § 216A.03, Subd. 7 and subject to the conditions set forth below, expedited procedures for approval of initial tariffs and price lists; the expedited procedures established by the Executive Secretary, and suggested in pertinent part by the Department in its comments, shall include the following conditions:**
- (1) initial tariff and price list filings subject to this expedited process shall be done in accordance with applicable Commission Rules;**
 - (2) the Department shall continue to review and analyze such filings under its current process;**
 - (3) with respect to filings to be approved under this expedited process, the Department shall provide to the Commission a memorandum describing the specific company's request and its recommendations for Commission action or any conditions, restrictions or changes it recommends be made to the filing; if the Department does not provide such memorandum within the time limits contemplated by the Commission's Rules, the Department may request an extension of time as set forth in the Rules; and**
 - (4) any other conditions or procedures recommended by the Commission's Executive Secretary.**
- 4. As to Category C, the Commission delegates authority to its Executive Secretary to develop and implement, in accordance with Minn. Stat. § 216A.03, Subd. 7 and subject to the conditions set forth below, expedited procedures for approval of 911 plans proposed by resellers of local exchange service. The expedited procedures established by the Executive Secretary, and suggested in pertinent part by the Department in its comments, shall include the following conditions:**
- (1) 911 Plans subject to this expedited process shall be done in accordance with applicable Commission Rules;**
 - (2) the Department shall continue to review and analyze filings under its current process;**
 - (3) with respect to 911 plans to be approved under this expedited process, the Department shall provide to the Commission a memorandum describing the specific company's request and its recommendations for Commission action or any conditions, restrictions or changes it recommends be made to the plan. If the Department does not provide such memorandum within the time limits contemplated by the Commission's Rules, the Department may request an extension of time as set forth in the Rules; and**
 - (4) any other conditions or procedures recommended by the Commission's Executive Secretary.**

5. As to Category D, the Commission delegates authority to its Executive Secretary to develop and implement, in accordance with Minn. Stat. § 216A.03, Subd. 7 and subject to the conditions set forth below, expedited procedures for approval of interconnection agreements and subsequent amendments to such agreements. The expedited procedures established by the Executive Secretary, and suggested in pertinent part by the Department in its comments, shall include the following conditions:
- (1) the expedited process will not apply to interconnection agreements arbitrated under § 252 of the federal Telecommunications Act of 1996;
 - (2) interconnection agreements and subsequent amendments may be approved under this expedited process so long as such agreements and/or amendments are substantially similar to those previously approved by the Commission;
 - (3) the Department shall continue to review and analyze filings under its current process;
 - (4) with respect to filings to be approved under this expedited process, the Department shall provide to the Commission a memorandum describing the specific company's request and its recommendations for Commission action or any conditions, restrictions or changes it recommends be made to the agreement; if the Department does not provide such memorandum within the time limits contemplated by the Commission's Rules, the Department may request an extension of time as set forth in the Rules or variance of such Rules; and
 - (5) any other conditions or procedures recommended by the Commission's Executive Secretary.
6. This Order and the procedures authorized herein shall only apply to filings submitted on or after September 1, 2000.
7. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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